

so suspends, he shall serve with the order to show cause pursuant to § 1309.46 an order of immediate suspension that shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his Certificate of Registration to the nearest office of the Administration. Also, upon service of the order of immediate suspension, the registrant shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the particular chemical or chemicals in his or her possession that were obtained under the authority of a registration or an exemption from registration granted by the Administrator by regulation, which are affected by the revocation or suspension; or

(2) Place all of such chemicals under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his registration at a time earlier than specified in the order to show cause pursuant to Section 1309.46, which request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

[60 FR 32454, June 22, 1995, as amended at 62 FR 5916, Feb. 10, 1997]

#### **§ 1309.45 Extension of registration pending final order.**

In the event that an applicant for re-registration (who is doing business under a registration previously granted and not revoked or suspended) has applied for re-registration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to ex-

pire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

#### **§ 1309.46 Order to show cause.**

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Administration regarding the applicant, the Administrator is unable to make the determinations required by the applicable provisions of section 303 of the Act (21 U.S.C. 823) to register the applicant, the Administrator shall serve upon the applicant an order to show cause why the application for registration should not be denied.

(b) If, upon information gathered by the Administration regarding any registrant, the Administrator determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 of the Act (21 U.S.C. 824), the Administrator shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon Receipt of an order to show cause, the applicant or registrant must, if he desires a hearing, file a request for a hearing pursuant to § 1309.54. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, pursuant to § 1309.51.

## **§ 1309.51**

(e) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

### **HEARINGS**

#### **§ 1309.51 Hearings generally.**

(a) In any case where the Administrator shall hold a hearing on any registration or application therefore, the procedures for such hearing shall be governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551-559) and specifically by sections 303 and 304 of the Act (21 U.S.C. 823-824), by §§1309.52 through 1309.57, and by the procedures for administrative hearings under the Act set forth in §§1316.41 through 1316.67 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

#### **§ 1309.52 Purpose of hearing.**

If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

#### **§ 1309.53 Request for hearing or appearance; waiver.**

(a) Any person entitled to a hearing pursuant to §§1309.42 and 1309.43 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in §1316.47 of this chapter.

(b) Any person entitled to a hearing pursuant to §§1309.42 and 1309.43 may, within the period permitted for filing a request for a hearing, file with the Administrator a waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if ad-

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missible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(c) If any person entitled to a hearing pursuant to §§1309.42 and 1309.43 fails to file a request for a hearing, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing, unless he shows good cause for such failure.

(d) If any person entitled to a hearing waives or is deemed to waive his or her opportunity for the hearing, the Administrator may cancel the hearing, if scheduled, and issue his final order pursuant to §1309.57 without a hearing.

[60 FR 32454, June 22, 1995. Redesignated at 62 FR 13968, Mar. 24, 1997]

#### **§ 1309.54 Burden of proof.**

(a) At any hearing for the denial of a registration, the Administration shall have the burden of proving that the requirements for such registration pursuant to section 303 of the Act (21 U.S.C. 823) are not satisfied.

(b) At any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) are satisfied.

[60 FR 32454, June 22, 1995. Redesignated at 62 FR 13968, Mar. 24, 1997]

#### **§ 1309.55 Time and place of hearing.**

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the FEDERAL REGISTER (unless expedited pursuant to Section 1309.44(c)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

[60 FR 32454, June 22, 1995. Redesignated at 62 FR 13968, Mar. 24, 1997]